



COUNTY OF FRESNO

Lisa A. Smittcamp
District Attorney

July 10, 2019

MuckRock News
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Somerville, MA 02144-2516

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Re.: California Public Records Act Request/
Information Regarding Brady lists/Cal. Penal Code §832.7

Dear Mr. Rubins,

This Office is in receipt of your request for public records sent by electronic mail (e-mail), dated July 4, 2019, and received by this Office on July 5, 2019. This letter is in reply to that request and is intended both as a response to your inquiry and as a means to assist you in obtaining the information you are seeking, to the extent that such information is available.

Your request identifies a potentially broad spectrum of material regarding all "Brady lists," "Giglio Lists," "potential impeachment disclosure lists," or "any similar compiled records or lists of records of the type set forth in California Penal Code §832.7(b)(1)(C)." You describe this category further by explaining it to mean "[a]ny record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence."

This lengthy description is summarized by your next paragraph, explaining that "the records I am seeking would provide a list of law enforcement officers in your jurisdiction whose involvement in a criminal proceeding would have to be disclosed as potentially exculpatory evidence in accordance with *Brady v. Maryland*, 373 U.S.83, (1963) and *Giglio v. United States*, 450 U.S. 150 (1972)."

To be direct, this Office does not maintain any form of a list responsive to the category you have identified. This Office does have a policy and procedure for addressing

impeachment evidence concerning officers arising from their personnel records. This Office does also stress the importance of our attorneys complying with our discovery and *Brady* obligations, touching upon such impeachment evidence. To this end, item 6.04 of the Office's Policy Manual, addresses *Brady* and individual deputy obligations for discovery as follows:

The Fresno County District Attorney's Office and the individual prosecutors therein have an obligation under the Due Process Clause of the 14th Amendment to disclose to the defense any evidence which is favorable to the defendant and is material to issues of either guilt or punishment, as confirmed by the United States Supreme Court in Brady v. Maryland (1963) 373 U.S. 83.

Each prosecutor has an affirmative duty to evaluate every case assigned to them to determine if there exists any information that may require disclosure pursuant to Brady. This duty also requires a review of all information which is in the possession of this office or the prosecution team. This shall be done to ensure that any material which falls under the ambit of Brady and its progeny is disclosed to the defense, as is our constitutional, statutory, and ethical obligations.

Law enforcement personnel, informants, cooperating individuals, and other witnesses who have been found to have an issue that could constitute Brady material are noted in this office's case management system. Every prosecutor shall check the case management system in any case assigned to them to determine whether a witness has been so noted. If a witness is so noted, the prosecutor shall consult with the designated Assistant District Attorney to gain access to the information. That prosecutor shall then analyze the information pursuant to Brady and its progeny to determine if it should be disclosed to the defense in their case. Any prosecutor making a filing decision as to a case should reference the case management system to determine if any critical witness is so noted, and if such information should be considered in the filing decision.

Any member of this office, including individual prosecutors or investigators, who become aware of any witness who they believe has engaged in conduct that could fall under Brady (including any information provided by the defense), shall bring the matter to the attention of the designated Assistant District Attorney for review to determine if it meets the requirements to be disclosed to the defense pursuant to Brady.

Members of this office shall not maintain any list of law enforcement personnel, informants, experts, or any other witnesses who they believe have engaged in conduct that could fall under Brady. Each prosecutor has an obligation to make certain that all information as to such witnesses is available to every prosecutor in this office. Brady material known by

anyone in this office is viewed by the Courts as being known by everyone in this office.

To those unfamiliar with confidential police officer personnel records, it may seem unusual that this Office does not maintain "Brady lists," "Giglio Lists," "potential impeachment disclosure lists," or "any similar compiled records or lists of records of the type set forth in California Penal Code §832.7(b)(1)(C)." However, such records, although potentially available for disclosure through a public records request, are not available from all agencies. As a result, generally, this Office has established an understanding with local criminal investigative agencies to inform the administration in this Office when officers with those agencies, or any of them, have issues that might impact their ability to testify. This can include a very broad range of issues; relocation to another department, medical leave, long term leave or vacation, discipline, criminal investigation, or even prosecution. In turn, Assistant District Attorney Jeff Dupras is responsible for making staff aware that there is an issue, for what duration, and does so through our electronic information system. He or his staff updates our internal data system, designating the officer implicated with the particular issue with a designation informing the Office attorneys and staff that there is an issue requiring inquiry.

After consultation with ADA Dupras, and depending upon relevance to the case, at times our attorneys will bring a *Pitchess* motion or join a *Pitchess* motion brought by the defense after informing the defense that there is an issue. But the designation does not, in itself, mean that a particular officer has potential impeachment evidence within the broad meaning of *Brady* or *Giglio*. It does mean, however, that our attorney is on notice to inquire with ADA Dupras to determine if the issue has relevance to the pending case and/or the designated officer's potential testimony. And this may require a motion to obtain the relevant information.

As you can imagine, this Office receives case submissions from a multitude of agencies. Any officer from any one of these submitting agencies has the potential to have some form of *Brady* or other issue relevant to a case prosecution. Although the list of those agencies is lengthy the following is a list of the most common agencies that submit cases to this Office and with whom we may designate witnesses, and therefore, those that could have revelation of *Brady* related matters:

- Adult Probation - ACT Team
- Alcohol Beverage Control
- ATF- FRESNO
- Avenal Police Department
- B-N-SF Railroad Police
- BNE-Fresno
- Board of Equalization-Fresno
- Bureau of Automotive Repair
- Bureau of Land Management
- Cal Fire
- California State Lottery

CHP - 410
CHP - Air Operation (412)
CHP - Bakersfield
CHP - Buttonwillow (426)
CHP - Fresno Area (435)
CHP. Central (412/401)
CHP. Coalinga (495)
CHP. Los Banos (461)
CHP. Madera
City College Police
City Fire Department
Clovis Fire Department
Clovis Police Department
Coalinga Fire Department
Coalinga Police Department
Coalinga State Hospital
Consumer Affairs-Fresno
Consumer Affairs-Sacramento
Contractors State License Board
CUSD Police Department
DEA-Fresno
Department of Agriculture
Department of Fish and Game
Department of Insurance-Fresno
Dept of Ind Relations-Oakland
Dept of Ind. Relations-Fresno
Dept of Parks & Recreation
Dinuba Police Department
District Attorney
DMV-Fresno (East Ave)
DMV-Fresno (Olive Ave)
DMV-Reedley
DOJ Bureau of Firearms
DOJ Cal B. of Investigations
Employment & Temp. Assistance
Employment Development Dept.
Fresno County Fire Department
Fresno Police Department
Fresno Sheriff Department
Fresno State Police
Hanford Police Department
Health Services-Investigations
Human Services System
Huron Fire Department

Huron Police Department
In Home Supportive Services
Internal Revenue-Fresno
Juvenile Probation - Fresno
Kerman Police Department
Kingsburg Police Department
Madera Police Department
Madera Sheriff Department
Mendota Police Department
Methamphetamine Task Force
Miramonte Conservation Camp
Orange Cove Police Department
Other Agency
Parlier Police Department
Pleasant Valley SP-Coalinga
Police Department of Firebaugh
Police Department of Fowler
Reedley Police Department
San Jose Police Department
Sanger Police Department
SCCCD PD, Fresno
SCCCD PD, Reedley
Selma Fire Department
Selma Police Department
Sierra Conservation Center
State Police Fresno Office
Tulare County Sheriff's Dept
Union Pacific Railroad Police
US Forest Service
US Postal Inspection Service

However, at no point does this Office receive or maintain the materials related to any administrative hearing in which sustained findings of any behavior are or were made. Such administrative hearings are confidential and this Office does not have access to them, save and except our own Bureau of Investigations.

Because of the unspecified notice that we receive from law enforcement agencies, we are placed in a position to know that our Office, the criminal defense, or both may be well served to file a *Pitches* motion. But we are not made aware of the specific basis and are not provided the records supporting the need for inquiry. Moreover, just because an inquiry is appropriate does not mean that a sustained finding was ever made or should be assumed. Discovery obligations are far broader than those matters involving only sustained findings. As a result, this Office has not "prepared, owned, used, or retained" any such list in the course of its business as those you have identified. (Gov. Code §6252(e).) Therefore this Office is under no obligation to create a

record that does not exist. (*Sander v. State Bar of California* (2013) 58 Cal.4th 300, 327.) Consequently, although this Office is committed to responding to your request as fully as is appropriate, this Office has no such list and declines to prepare one.

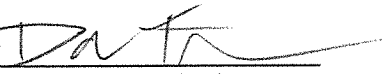
I recognize that I am providing you far more information than you have requested while at the same time denying your request to the list you are seeking in the first instance. But, this is because we have no such list. The explanation provided, however, is to help avoid frustration on your part and is intended to provide you sufficient information by which you will be able to direct your inquiry to the agencies that possess the information you are seeking.

In general, the only Office that will have access to confidential personnel records of administrative proceedings, will be the Office that generates those administrative records in the first instance. The bulk of investigative reports received by this Office are generated by the Fresno Police Department and the Fresno County Sherriff's Department. You may wish to begin your inquiry with those agencies.

Please feel free to contact me at your convenience in the event you believe I have misunderstood your inquiry or if you have any questions or concerns in regard to this matter. Please be aware that I am not at liberty to provide any form of legal advice in regard to your inquiry. I am, however, obligated to see to it that the law concerning public records is not frustrated through misunderstanding or misdirection of inquiries. As a result, I am at liberty to provide clarification and explanation.

Sincerely,

Lisa A. Smittcamp
DISTRICT ATTORNEY

By 
Douglas O. Treisman
Senior Deputy District Attorney